

**Chapter 522. Application Processing Procedures for Waste Discharge Licenses.**

**SUMMARY:** This rule contains the procedures used for the processing of applications for a waste discharge license (or a "permit"). This rule is in addition to and supplements the basic procedures in Chapter 2 for all applications processed by the department. The content of this rule is largely taken from federal regulations, and most references and terms are in the context of the Code of Federal Regulations. To aid the reader, a citation to the appropriate federal regulation is shown in each section of this rule.

**Section 1. References to Federal Regulations and definitions.** Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those regulations effective as of July 1, 1998, as they appear in volume 40 of the Code of Federal Regulations (CFR). Definitions for terms used in this rule may be found Chapter 520.

**Section 2. Applicability of Chapter 2.** Unless specified differently in this rule, the requirements of Chapter 2 of the department's rules, "Rules Concerning the Processing of Applications", applies to waste discharge license applications. In the event of inconsistencies with Chapter 2 of the Department's Rules, waste discharge license applications will be processed under the procedures set forth in this Chapter.

**Section 3. Specialized Definitions.** [see 40 CFR 124.2]

- (a) In addition to the definitions given in Chapter 520, the definitions below apply to this chapter.

Consultation with the Regional Administrator (40 CFR 124.62(a)(2)) means review by the Regional Administrator following evaluation by a panel of the technical merits of all 301(k) applications approved by the Department. The panel (to be appointed by the Director of the Office of Water Enforcement and Permits) will consist of Headquarters, Regional, and State personnel familiar with the industrial category in question.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved program."

Variance (NPDES) means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

- (b) The term Director means the Department or Regional Administrator and is used when the accompanying provision is required of EPA-administered programs and of State programs under Secs. 123.25 (NPDES) or 145.11 (UIC). The term Regional Administrator is used when the accompanying provision applies exclusively to EPA-issued permits and is not applicable to State programs under these sections.

**Section 4. Modification, revocation and reissuance, or termination of permits.** [see 40 CFR 124.5]

- (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 38 MRSA § 414-A(5). All requests shall be in writing and shall contain facts or reasons supporting the request.
- (b) [reserved]
- (c)
  - (1) If the Department tentatively decides to modify or revoke and reissue a permit under 38 MRSA, Sections 414-A(5) and 341-D or 40 CFR 144.39 (UIC), it shall prepare a draft permit under Section 5 incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.
  - (2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
- (d) If the Department tentatively decides to terminate a permit under 38 MRSA § 414-A(5), it shall issue a notice of intent terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 5.

**Section 5. Draft permits.** [see 40 CFR 124.6]

- (a) Once an application is complete, the Department shall tentatively decide whether to prepare a draft permit or to deny the application.
- (b) [reserved]
- (c) If the Department tentatively decides to issue an NPDES general permit, it shall prepare a draft general permit under paragraph (d) of this section.
- (d) If the Department decides to prepare a draft permit, it shall prepare a draft permit that contains the following information:
  - (1) All conditions under Chapter 523 (NPDES) or Secs. 144.51 and 144.52 (UIC);
  - (2) All compliance schedules under Chapter 523 (NPDES) or 40 CFR 144.53 (UIC);
  - (3) All monitoring requirements under Chapter 523 (NPDES) or 40 CFR 144.54 (UIC); and
  - (4) For:
    - (i) [reserved];

- (ii) UIC permits, permit conditions under 40 CFR 144.52;
  - (iii) [reserved];
  - (iv) [reserved];
  - (v) NPDES permits, effluent limitations, standards, prohibitions, conditions under Chapter 523.
- (e) Draft permits shall be accompanied by a fact sheet if required under Section 6.

**Section 6. Fact sheet.** [see 40 CFR 124.8]

- (a) A fact sheet shall be prepared for every draft permit for a major UIC, or NPDES facility or activity, for every NPDES general permit (Chapter 529), for every NPDES draft permit that incorporates a variance or requires an explanation under Section 7, and for every draft permit which the Department finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person.
- (b) The fact sheet shall include, when applicable:
- (1) A brief description of the type of facility or activity which is the subject of the draft permit;
  - (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.
  - (3) [reserved]
  - (4) [reserved]
  - (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
  - (6) A description of the procedures for reaching a final decision on the draft permit including:
    - (i) The beginning and ending dates of the comment period under Section 8 and the address where comments will be received;
    - (ii) Procedures for requesting a hearing and the nature of that hearing; and
    - (iii) Any other procedures by which the public may participate in the final decision.
  - (7) Name and telephone number of a person to contact for additional information.
  - (8) For NPDES permits, provisions satisfying the requirements of Section 7.

**Section 7. Additional information in fact sheets.** [see 40 CFR 124.56]

In addition to meeting the requirements of Section 6, NPDES fact sheets shall contain the following:

- (a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline, performance standard, as required by Chapter 523 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.
- (b)
- (1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

- (i) Limitations to control toxic pollutants under Chapter 523;
  - (ii) Limitations on internal waste streams under Chapter 523; or
  - (iii) Limitations on indicator pollutants under Chapter 524.
  - (iv) Limitations set on a case-by-case basis under Chapter 524, or pursuant to Section 405(d)(4) of the CWA.
- (2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Department's decision on regulation of users under Chapter 523; and
- (c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

**Section 8. Public notice of permit actions and public comment period.** [see 40 CFR 124.10]

(a) Scope.

(1) The Department shall provide for public notice that the following actions have occurred:

- (i) [reserved];
- (ii) A permit application is being filed;
- (iii) A hearing has been scheduled under Chapter 2;

(b) Timing

- (1) Public notice of the filing of an application for a permit required under paragraph (a) of this section shall allow at least 30 days for public comment during which additional information or a hearing may be requested.
- (2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the permit application and the two notices may be combined.)

(c) Methods Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

- (1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits);
  - (i) The applicant ( if necessary);
  - (ii) Any other agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA when the draft permit is prepared by the State);

- (iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States.
- (iv) For NPDES permits only, any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
- (v) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;
- (vi) [reserved];
- (vii) [reserved];
- (viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;
- (ix) Persons on a mailing list developed by:

- (A) Including those who request in writing to be on the list;
- (B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
- (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request.)

(x)

- (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
- (B) to each State agency having any authority under State law with respect to the construction or operation of such facility.

(2)

- (i) As required in Chapter 2, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(3) [reserved]; and

- (4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents

- (1) All public notices. All public notices issued under this Chapter shall contain the following minimum information:

- (i) Name and address of the office processing the permit action for which notice is being given;

- (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES draft general permits under Chapter 529;
  - (iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES general permits when there is no application.
  - (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and
  - (v) A brief description of the comment procedures required by Sections 9 and 11 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.
  - (vi) [reserved]
  - (vii) For NPDES permits only, a general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area.
  - (viii) [reserved]
  - (ix) Any additional information considered necessary or proper.
- (2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under Chapter 2 shall contain the following information:
- (i) Reference to the date of previous public notices relating to the permit;
  - (ii) Date, time, and place of the hearing; and
  - (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- (e) In addition to the general public notice described in paragraph (d)(1) of this section, copies of the fact sheet, the permit application (if any) and the draft permit (if any) shall be made available to all persons identified in paragraphs c(1)(1), (ii), (iii) and (iv) of this section and to any other interested persons, including those responding to public notices and requesting information on certain applications. Persons provided with draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing under section 9.

**Section 9. Public comments and requests for public hearings.** [see 40 CFR 124.11] During the public comment period provided under Section 8, any interested person may submit written comments on the application or draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 12.

**Section 10. Public notice for thermal discharge variances.** [see 40 CFR 124.57]

- (a) Section 316(a) requests. In addition to the information required under Section 8(d)(1), public notice of an NPDES draft permit for a discharge where a CWA section 316(a) request has been filed under Chapter 523 shall include:

- (1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA section 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306;
- (2) A statement that a request under section 316(a) of the CWA has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and
- (3) If the applicant has filed an early screening request under 40 CFR 125.72 for a section 316(a) of the CWA variance, a statement that the applicant has submitted such a plan.

**Section 11. Public hearings.** [see 40 CFR 124.12]

(a)

- (1) The Department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s);
- (2) The Department may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;
- (3) [reserved];
- (4) Public notice of the hearing shall be given as specified in Section 8.

**Section 12. Response to comments.** [see 40 CFR 124.17]

- (a) At the time that any final permit decision is issued, the Department shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:
  - (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
  - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- (b) [reserved]
- (c) The response to comments shall be available to the public.

**Section 13. Decision on variances.** [see 40 CFR 124.62]

- (a) The Department may grant or deny requests for the following variances (subject to EPA objection under 40 CFR 123.44 for State permits):
  - (1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;
  - (2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or
  - (3) Variances under CWA section 316(a) for thermal pollution.

- (b) The State Department may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:
  - (1) A variance based on the economic capability of the applicant under CWA section 301(c); or
  - (2) A variance based on water quality related effluent limitations under CWA section 302(b)(2).
- (c) The Regional Administrator may deny, forward, or submit to the EPA Office Director for Water Enforcement and Permits with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the Department, or that is submitted to the Regional Administrator by the requester where EPA is the permitting authority.
- (d) The EPA Office Director for Water Enforcement and Permits may approve or deny any variance request submitted under paragraph (c) of this section. If the Office Director approves the variance, the Director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 CFR 124.64.
- (e) The Department may deny or forward to the Administrator (or his or her delegate) with a written concurrence a completed request for:
  - (1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;
  - (2) A variance based upon certain water quality factors under CWA section 301(g).
- (f) The Administrator (or his or her delegate) may grant or deny a request for a variance listed in paragraph (e) of this section that is forwarded by the Department, or that is submitted to EPA by the requester where EPA is the permitting authority. If the Administrator (or his or her delegate) approves the variance, the Department or Regional Administrator may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 CFR 124.64.

AUTHORITY: 38 MRSA § 341-D

EFFECTIVE DATE: This rule will become effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State's application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123.